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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,784	12/13/2004	Gideon Gross	GROSS32	4624

1444 7590 07/07/2009

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EXAMINER	
DUFFY, BRADLEY	
ART UNIT	PAPER NUMBER
1643	

MAIL DATE	DELIVERY MODE
07/07/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10517784	12/13/2004	GROSS ET AL.	GROSS32

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EXAMINER	
BRADLEY DUFFY	
ART UNIT	**PAPER**
1643	20090630

DATE MAILED:

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Commissioner for Patents

Please see attached notice of non-reponsive amendment.

/Stephen L. Rawlings/
Primary Examiner, Art Unit 1643

Notice of Non-Responsive Amendment

1. The amendment filed April 15, 2009, is non-responsive for the following reason:

The amendment filed April 15, 2009, would amend all claims, which were previously drawn to the elected and originally presented invention, so as to only present claims drawn to a non-elected invention.

The claims, as would be amended, are not readable on the elected invention for the following reasons:

The claims, as would be amended, would be directed to a polynucleotide encoding a polypeptide which comprises, in part, at least one antigenic peptide comprising an MHC class I epitope, selected from the group consisting of a tumor-associated antigen (TAA), an antigen from a pathogen selected from the group consisting of a bacterial antigen, a viral antigen, a fungal antigen and a parasite antigen, and at least one idiotypic peptide expressed by autoreactive T lymphocytes.

In contrast, the originally presented claims, which were examined on the merits, were directed to a polynucleotide encoding a polypeptide which comprises, in part, at least one antigenic peptide comprising an MHC class I epitope, wherein said *antigenic peptide is not related to an autoimmune disease*.

As a first point, due to this amendment it is unclear whether the *peptide* or the *epitope* is selected from the group consisting of a bacterial antigen, a viral antigen, a fungal antigen and a parasite antigen, and at least one idiotypic peptide expressed by autoreactive T lymphocytes. Therefore, while the elected invention limited the *antigenic peptide*, it appears that this amendment is drawn to far broader subject matter than the originally presented and examined invention, wherein the *antigenic peptide* is no longer limited to peptides that are *not related to an autoimmune disease*.

Furthermore, it is noted that even if this newly recited limitation is read as limiting the antigenic peptide, the genus of tumor-associated antigens (TAA) and the genus of idiotypic peptides expressed by autoreactive T lymphocytes recited are known in the art to include *antigenic peptides that are* ***related*** *to an autoimmune disease,* so it is

apparent that the claims, as would be amended, are no longer limited to *antigenic peptides that are not related to an autoimmune disease* as originally presented and examined.

Accordingly, it is apparent that the claims, as would be amended, encompass a genus of polynucleotides which differ so substantially from the breath of the originally presented claims that an examination of the claims would require different considerations and/or searches, which were not before necessary for the originally presented and examined invention. Moreover, the broader scope of the claims, as would be amended, would require a different field of search (e.g., searching additional and/or different classes/subclasses or electronic resources, and/or employing additional and/or different search queries). For example, a prior art search performed to consider the merits of the elected invention would not be applicable, or sufficient to permit a determination of the novelty and/or obviousness of elements encompassed by the far broader scope of the newly presented claims. Notably, for example, in the previous Office action at page 20, the prior art was determined to teach polynucleotides that encode polypeptides comprising a β2-microglobulin polypeptide linked through its carboxy terminus to polypeptide stretch that allow the anchorage of β2-microglobulin to the cell membrane and through its amino terminus to at least one antigenic peptide comprising a MHC class I epitope, wherein said antigenic peptide is related to an autoimmune disease which does not read on the originally presented claims reciting antigenic peptides *not* related to an autoimmune disease. However, the prior art has not been searched or considered to determine, e.g., what the art teaches about the far broader genus of peptides that are tumor-associated antigens (TAA) or idiotypic peptides expressed by autoreactive T lymphocytes. Additionally, it is noted that the broader scope of the claims, as would be amended, is likely to raise different non-prior art issues under 35 U.S.C. §§ 101 and/or 35 U.S.C. 112, first paragraph, which pertain to the corresponding utility requirement and/or enablement and/or written description requirements.

As such, examination of the claims, as would be amended, would be unduly burdensome. Notably, the claims, as would be amended, are drawn to an invention not encompassed by the original claims which would require new and different considerations and searches that were not before necessary. Thus, any need to search and consider the claims, as would be amended, would create an undue and serious burden on the Office.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits.

Accordingly, after entry of the amendment, all remaining claims would be withdrawn from consideration as being directed to non-elected inventions, and therefore the amendment, which presents only claims drawn to such non-elected inventions, is non-responsive and will not be entered. See 37 CFR 1.142(b) and MPEP § 821.03.

2. Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brad Duffy whose telephone number is (571) 272-9935. The examiner can normally be reached on Monday through Friday 7:00 AM to 4:30PM with alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Helms can be reached on (571) 272-0832. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Respectfully,
Brad Duffy
571-272-9935

/Stephen L. Rawlings/
Primary Examiner, Art Unit 1643

/bd/
Examiner, Art Unit 1643
June 30, 2009